

STANDARD CRIMINAL 5b(2)
STANDARDS FOR THE BURDEN OF PROOF

There are three standards for the burden of proof:

- Preponderance of the evidence;
- Clear and convincing evidence;
- Beyond a reasonable doubt.

Preponderance of the Evidence

A party having the burden of proof by a preponderance of the evidence must persuade you, by the evidence, that the claim or a fact is more probably true than not true. This means the evidence that favors that party outweighs the opposing evidence.

Clear and Convincing Evidence

A party having the burden of proof by clear and convincing evidence must persuade you, by the evidence, that the claim or a fact is highly probable. This standard is higher than the standard for proof by a preponderance of the evidence, but is lower than the standard for proof beyond a reasonable doubt.

Beyond a Reasonable Doubt

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt. Proof beyond a reasonable doubt is proof, by the evidence, that leaves you firmly convinced of the Defendant's guilt. This standard is higher than the standard for either proof by a preponderance of the evidence or proof by clear and convincing evidence.

There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find [him][her] guilty. If, on the other hand, you think there is a real possibility that [he][she] is not guilty, you must give [him][her] the benefit of the doubt and find [him][her] not guilty.

COMMENT: This instruction takes the instruction given in *State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995), and combines it with the definitions for preponderance of the evidence and clear and convincing evidence from the civil RAJI. In a criminal case, facts in general must be proved by a preponderance of the evidence, and certain specific facts must be proved by either a preponderance of the evidence or by clear and convincing evidence. A.R.S. § 13-

205(A) unless otherwise provided, a defendant must prove an affirmative defense by a preponderance of the evidence); A.R.S. § 13-206(B) (defendant must prove entrapment by clear and convincing evidence); A.R.S. § 13-502 (defendant must prove legal insanity by clear and convincing evidence); *State v. Terrazas*, 189 Ariz. 580, 582, 944 P.2d 1194, 1196 (1997) (State must prove by clear and convincing evidence that defendant committed other act).